

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, September 22, 2021

Hearing Room

5B

10:00 AM

8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Docket 0

Tentative Ruling:

- NONE LISTED -

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8:11-13618 James E Tuley and Susan B Tuley

Chapter 11

#1.00 U.S. Trustee Motion to Dismiss or Convert Reorganized Debtors' Case Under 11 U.S.C. §1112(B) For Failure To Pay Post-Confirmation Quarterly Fees And File Post-Confirmation Reports

Docket 191

Tentative Ruling:

Tentative for 9/22/21:

The court is usually reluctant to dismiss or convert a case of this age, this far from confirmation, absent compelling reasons. Would conversion better serve creditors?

Party Information

Debtor(s):

James E Tuley

Represented By
Bryan L Ngo
Bert Briones

Joint Debtor(s):

Susan B Tuley

Pro Se

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8:19-14893 Talk Venture Group, Inc.

Chapter 11

#2.00 Motion To Dismiss Chapter 11 Proceeding Debtor

Docket 272

Tentative Ruling:

Tentative for 9/22/21:

This is obviously a very disappointing development. The only real question the court sees is whether conversion might be a better remedy. Mention is made of certain payments or misappropriations taken by former managers Knirr and Gamez of the debtor back in January to June 2019. But for reasons not well explained reorganized debtor declines to pursue these. Otherwise the tangible assets seem very marginal and in any case way over encumbered in favor of secured creditors. The court is disinclined to saddle an appointed Chapter 7 trustee with an estate void of administrable assets that could benefit unsecured creditors; the secured creditors, primarily Wells Fargo, can liquidate their own collateral. But the court would hear more about whether there might be litigation claims worth pursuing.

No tentative.

Appearance: required

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By
Anerio V Altman

Movant(s):

Talk Venture Group, Inc.

Represented By
Anerio V Altman
Anerio V Altman
Anerio V Altman
Anerio V Altman
Anerio V Altman
Anerio V Altman

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8:21-11558 Parks Diversified, LP

Chapter 11

#3.00 Application Of Debtor And Debtor-In-Possession For Authority To Employ Klein & Wilson, As Chapter 11 Special Litigation Counsel
[See Second Amended Notice Document #56]

Docket 16

Tentative Ruling:

Tentative for 9/22/21:

This is debtor, Parks Diversified, LP's ("Debtor") application to employ the law firm of Klein & Wilson ("K&W") as Debtor's special litigation counsel. The motion is opposed by Richard and Lucia Parks ("the Parks").

The Parks' main objection is that the bankruptcy petition was unauthorized and filed in bad faith. However, this opposition was filed before this court issued its adopted tentative ruling denying the Parks' motion to dismiss this bankruptcy case on September 1. In the tentative ruling, the court noted that although the bankruptcy filing was unusual given that Debtor is inoperative, had no income, and no known third-party creditors (which may now be superseded by an IRS claim, see below), there did not seem to be anything indicating a bad faith filing. But a theoretically legitimate purpose was articulated, i.e. causing partners to contribute on account of their alleged overdrawn partner capital accounts. The court also noted that a finding on whether the petition was authorized was a question for another day. Certainly, an application to employ counsel is an inappropriate proceeding within which to make such a determination. Therefore, the court will once again defer that question to a future proceeding.

The Parks also object to this application on the basis that the sole beneficiary of the representation will be an insider of Debtor, mainly David Klein, their son. Debtor argues that this is essentially the same argument put forth in objecting to the application to employ Goe Forsythe & Hodges ("GF&H") and the objection was overruled. Debtor asserts that following the hearing on the motion to dismiss, the IRS filed a claim in the amount of \$74,246,79 in taxes, penalties, and interest. Thus, Debtor argues, there are

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claims to pursue that will benefit the estate, and not just Mr. Klein.

The Parks also object to the application because, they argue, any attempt to pursue fraudulent transfer claims regarding the North Valley Shopping Mall would be frivolous on its face. In reply, Debtor asserts that proposed Special Counsel will not be pursuing any fraudulent transfer claims related to the shopping mall and no such allegations are in the adversary proceeding.

The Parks next object on the basis that proposed Special Counsel does not qualify as a disinterested party and there is an actual conflict of interest because Special Counsel will be representing Mr. Klein primarily, and in that role will be pursuing litigation adverse to the interests of the Parks (i.e., other equity security holders and partners of Debtor) in the two pending state court actions, which, the Parks argue, will surely influence this bankruptcy case (but exactly how is left vague). The Parks also assert that there is likely a conflict created by Mr. Klein paying the retainer fee personally. Debtor asserts that it is not involved at all in the state court litigation and neither of the state court cases will have any financial impact upon Debtor. Debtor also points out that the Parks did not provide any specifics on how such litigation would affect Debtor. Debtor also asserts that no case law or any other authority is cited suggesting that personally paying a retainer fee creates a conflict of interest or is in any way a disqualifying act. On the contrary, Debtor cites the California Practice Guide: Bankruptcy at 4:284 where the treatise notes, "It is not unusual for an insider (officer or partner of debtor, etc.) to pay fees to employ counsel or other professionals in the debtor's bankruptcy case." Debtor is likely correct here that there is no disqualifying conduct or impermissible conflict of interest on the part of the proposed Special Counsel.

The Parks next argue that the billing arrangement, hourly, is suspect because, they argue, when there are meritorious claims to be litigated, plaintiff's counsel will generally bill on a contingency basis to ensure that interests are aligned. But again, there is no authority cited for this proposition or anything else that argues for disqualification. Moreover, absent the discovery of some yet unidentified tangible asset, the engagement of Special Counsel is effectively contingent, or at the sole expense of Mr. Klein.

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Finally, the Parks assert that the application fails to put forth Special Counsel's qualifications to take on the proposed employment. The Parks assert that nothing on the firm's website or individual attorney profiles indicates significant bankruptcy experience. The application does not include firm resumes but does include a declaration from Michael LeBoff of K&W briefly outlining his experience, and the hourly billing rates of the relevant professionals. Debtor points out that the firm has significant experience in business litigation of a sort implicated by the adversary proceedings, and in particular, Michael LeBoff is an experienced complex commercial litigator despite having only limited bankruptcy experience. This should not matter, Debtor argues, because Special Counsel is not being retained for its bankruptcy experience. GF&H is the Debtor's primary bankruptcy counsel. Special Counsel's role is to prosecute the adversary complaint, which is comprised essentially of state law breach of contract and fraudulent transfer claims.

In sum, the Parks' opposition to this application, like their objections to the GF&H application, fails to raise any fatal issues that could not be easily cured by supplementation (such as firm resumes). To be sure, this is an unusual case, and the court has set a hearing date in early November to decide whether this case should remain in chapter 11 or be converted. Moreover, just because counsel is approved for employment does not mean that the court will not be carefully reviewing accomplishments benefitting the estate come fee application time.

Grant

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe

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8:21-11558 Parks Diversified, LP

Chapter 11

#4.00 Order To Show Cause Why Richard Parks, Lucia K. Parks And The Parks Family Trust Should Not Be Held In Contempt For Willful Violaton Of The Automatic Stay
[In Person Appearance: Respondents - Richard Parks and Lucy Parks]

Docket 24

Tentative Ruling:

Tentative for 9/22/21:

This is the hearing on the issued Order to Show Cause re Contempt for violation of the stay. As has been said, this is an unusual case. It is unusual not only because it represents a dismaying interfamilial dispute, and is merely the latest episode in a series of such unfortunate family events, but also because it is very unclear where this case is going or can go, considering that it started with no known creditors and little or no tangible assets (beyond the \$20k taken from the account at issue) . This may have changed with a recent filing of a claim by IRS. The question of contempt is also muddled because: 1. The account at issue was reinstated within twenty days of the petition and ten days after demand and 2. there seems to be an argument that the initial taking might have been justified, or at least the Parks were so informed by counsel. This in turn was prompted by allegedly sincere doubt about the propriety or efficacy of the bankruptcy filing, stemming from the fact that the petition was filed by only one of three general partners after an alleged "ousting" of the Parks as general partner although they represent 99% of the limited partnership, which is , of course, also disputed.

On the other side of the ledger, the court takes violations of the stay very seriously, particularly when this episode should more easily (and more advisedly) have been the subject of a relief of stay or other clarifying motion rather than "self-help." The court understands the doubts the Parks may have had, but the court is surprised that parties as well represented as they are should have initially tested the reach of the automatic stay on the strength of those doubts; a very risky strategy to say the least. Adding to the muddle is the reaction of the debtor; spending \$11,495 in fees and costs on this topic (as last reported, undoubtedly higher now). Of course, this leads to the

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conclusion that all of this is a lot more about punishing adversaries and continuing the family war than anything else. More uncertainty is added because the Supreme Court has clarified a new standard for determining willful and thus sanctionable violations of bankruptcy court orders. “[C]ivil contempt should not be resorted to where there is a fair ground of doubt as to the wrongfulness of the defendant’s conduct.” *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801-02 (2019). A “fair ground of doubt” is an “objective” standard. *Id.* at 1802. “[A] party’s subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable.” *Id.* This standard is applicable to stay violations. See e.g. *Suh v. Anderson (In re Jeong)* 2020 WL 1277575 (9th Cir. BAP March 16, 2020).

On this record the court finds a "fair ground of doubt" although it is a close question that it is "objectively reasonable" and, as stated above, should have been handled differently. But because the alleged contemnors fairly promptly remedied the violation by returning the funds, and the court sees no other damage to any prospects the debtor might have had, or, frankly, any damage at all, the court's overall conclusion is that justice would not be served by imposition of sanctions or damages on these facts. Rather, such steps would only serve to further inflame the situation in an already contentious case. The parties are admonished, however, not to further test this question, and the result here is based on its very unique confluence of factors. Further visits to the question of stay violations are not likely to be treated as lightly.

Deny

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe

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8:21-10256 BioXXel, LLC

Chapter 11

#5.00 First And Final Application For Pre-Confirmation Compensation And Reimbursement Of Expenses For The Period: 2/3/2021 to 8/30/2021:

**JOSHUA R. TEEPLE OF GROBSTEIN TEEPLE, LLP AS CHIEF
RESTRUCTURING OFFICER FOR THE CHAPTER 11 DEBTOR**

FEE: \$37,229.50

EXPENSES: \$6016.31

Docket 146

Tentative Ruling:

Tentative for 9/22/21:

Grant on condition that no creditor experiences a reduction in recovery by reason of the "success fee".

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood
Laila Masud
Matthew Grimshaw
Kristine A Thagard
Caroline Djang

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8:21-10256 BioXXel, LLC

Chapter 11

#6.00 First And Final Application For Pre-Confirmation Fees and Costs For
Period: 2/2/2021 to 8/25/2021:

MARSHACK HAYS LLP, DEBTOR'S ATTORNEY:

FEE: \$287,257.00

EXPENSES: \$8,814.20

Docket 156

Tentative Ruling:

Tentative for 9/22/21:
Allow as prayed.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood
Laila Masud
Matthew Grimshaw
Kristine A Thagard
Caroline Djang

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8:21-10863 Nalu's Group, Inc.

Chapter 11

#7.00 Application for Compensation For Period: 4/1/2021 to 7/15/2021

M. JONES & ASSOCIATES PC, DEBTOR'S ATTORNEY,

FEE: \$19170.00

EXPENSES: \$2928.00

Docket 52

Tentative Ruling:

Tentative for 9/22/21:

Allow when client files non-opposition as required in LBRs, or further order is obtained waiving the requirement as needed under these circumstances.

Appearance: optional

Party Information

Debtor(s):

Nalu's Group, Inc.

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:21-10863 Nalu's Group, Inc.

Chapter 11

#8.00 First And Final Pre-Confirmation Fee Application For The Period: 4/2/2021 to 8/31/2021

ROBERT P. GOE, SUB CHAPTER V TRUSTEE

FEE: \$8,142.00

EXPENSES: \$19.40

Docket 58

Tentative Ruling:

Tentative for 9/22/21:

Allow as prayed. Appearance: optional

Party Information

Debtor(s):

Nalu's Group, Inc.

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:20-10143 Bridgemark Corporation

Chapter 11

**#9.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary
Petition Non-Individual.
(cont'd from 8-25-21 status conference)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-27-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE (1) STATUS
CONFERENCE REGARDING OBJECTIONS TO ADMINISTRATIVE
EXPENSE REQUEST; AND (ii) POST-CONFIRMATION STATUS
CONFERENCE ENTERED 9-17-21**

Tentative Ruling:

Tentative for 8/25/21:
See #2.

Tentative for 8/4/21:
See #s 5 and 6.

Tentative for 7/28/21:
See #s 14-16.

Tentative for 6/23/21:
Continue to adequacy of disclosure or confirmation hearing.

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CONT... Bridgemark Corporation

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Tentative for 4/7/21:

See #9.

Tentative for 3/31/21:

See #16. Appearance: optional

Tentative for 2/24/21:

Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:

Same as #8. Appearance: required

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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8:20-10143 Bridgemark Corporation

Chapter 11

**#10.00 Joint Objection of Bridgemark Corporation And Placentia Development Company, LLC Claims:
(con't from 8-25-21 per order approving stip. to cont. s/c re: objections to administrative expense requests entered 8-24-21)**

Claim No. 17-1

Mary Jean Boyd Todd

Claim No. 19-1

Sheri C. Parks Trust

Claim No. 20-1

**Survivors Trust of Politiski Trust
(aka Plitiski Survivors Trust)**

Claim No. 21-1

Ridley J. Politiski

Claim No. 22-1

Michael P. Politiski

Claim No. 23-1

Marianne P. Covington

**Claim No. 24-1
Family Trust**

Richard And Karen Clements

**Claim No. 26-1
Revocable Trust**

The Catherine S. Chandler

Claim No. 27-1

D. McFarland Chandler Jr.

Claim No. 28-1

D. McFarland Chandler

Claim No. 29-1

Ethel Severson Living Trust

Claim No. 31-1

Robert Hall

Claim No. 32-1

John Kraemer

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**Bridgemark Corporation
Claim No. 33-1**

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Christine Vetter Pate

Claim No. 34-1

Susan Elizabeth Vetter

Claim No. 35-1

Laughlin E. Waters

Docket 478

***** VACATED *** REASON: CONTINUED TO 10-27-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE (I) STATUS
CONFERENCE REGARDING OBJECTIONS TO ADMINISTRATIVE
EXPENSE REQUESTS; AND (II) POST-CONFIRMATION STATUS
CONFERENCE ENTERED 9-17-21**

Tentative Ruling:

Tentative for 8/4/21:
See #5. Status?

Tentative for 7/28/21:

Sustain. The arguments of Mr. Kraemer, and by extension any others similarly situated, seem beside the point (or at least unclear) based on the court's understanding of events. The leases have all been assumed by prior order of this court and assigned to a buyer. No abridgment was made of rights thereunder. If rights exist for access to mineral rights holders and/or payment for extraction under those leases, and/or resistance to capping of wells, they remain so in the hands of the transferee. But the court is not inclined to get into advisory opinions on what might be triggered by future events and those disputes, if any, will be the domain of another court. The objectors allege that all monetary claims that might be characterized as administrative have already been paid, and thus claims for those sums disallowed. The court sees nothing to dispute that allegation.

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Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Matthew J Pero